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EXAMINER

DODDS, HAROLD E

ART UNIT	PAPER NUMBER
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2177

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16

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/515,310

Applicant(s)

QUERNEMOEN, JOHN M.

Examiner

Harold E. Dodds, Jr.

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. The "Declaration" filed on 30 October 2003 under 37 CFR 1.131 has been considered but is ineffective to overcome the Yang et al. (U.S. Patent No. 6,542,854) reference.

2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Yang et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). On page 2, paragraph 2 of the "Declaration", the applicant states:

"The inventions included in this application were completed prior to April 30, 1999. As evidence of this, attached hereto as Exhibit I is a true and accurate copy of Unisys Invention Disclosure Number "RA-5244", with only the dates removed. "

This statement is unclear whether it means conception of the proposed invention or reduction of practice of the proposed invention. The examiner understands this statement to mean conception of the invention. Furthermore, since the dates have been redacted the conception of the invention could have occurred on 29 April 1999, which means that any appropriate prior art with a priority date of 28 April 1999 or earlier could be used to render obvious the claims.

3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Yang et al. reference to either a

constructive reduction to practice or an actual reduction to practice. No statement was provided in the "Declaration" to demonstrate diligence to the reduction of practice of this proposed patent.

4. Finally, the applicant should provide a correlation of the elements of the "Invention Disclosure" to the critical elements of the proposed independent claims. This is required to determine whether the "Invention Disclosure" describes the independent claims of the patent application.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-6, and 8-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stellwagen, Jr. (U.S. Patent No. 5,835,755) and Yang et al. (U.S. Patent No. 6,542,854).

7. Stellwagen renders obvious independent claim 1 by the following:  
"...obtaining at least one user defined workload requirement..." at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43.  
"...the user defined workload requirement..." at col. 7, lines 48-51 and col. 8, 39-43.  
"...Includes a plurality of inputs from a user..." at col. 7, lines 48-51 and col. 8, lines 39-43.

"...determining the database management system server hardware requirements..." at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

"...for the yet-to-be built database management system server..." at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

"...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

"...and outputting said yet-to-be built database management system server requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

Stellwagen does not teach the maximum desired processor utilization and the transactions per second requirements.

8. However, Yang teaches the use of processor utilization and transactions per second requirements as follows:

"...a maximum desired processor utilization..." at col. 15, lines 45-54.

"...and a transactions per second requirement..." at col. 29, lines 59-60.

It would have been obvious to one of ordinary skill at the time of the invention to combine Yang with Stellwagen since Stellwagen and Yang, teach the use of computers, the use of databases, the use of networks, the use of clients, the use of servers, the use of hardware, the use of software, the use of workloads, the use of requirements, and the use of the SQL query language. Stellwagen provides a proposed database management system server and Yang provides parameters for determining the performance of the server.

9. As per independent claim 3, the "...obtaining at least one user defined workload requirement..." is taught by Stellwagen at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43,

the "...determining the database management system server hardware requirements..." is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...for the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

the "...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43,

the "...and outputting said yet-to-be built database management system server requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...said database management system server requirements..." is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...include a number of processors requirement, is taught by Yang at col. 8, lines 26-29,

the "...a memory size requirement..." is taught by Yang at col. 1, lines 13-20,

the "...and a mass storage requirement..." is taught by Yang at col. 1, lines 13-20,

and the "...for the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

10. As per independent claim 4, the "...obtaining at least one user defined workload requirement..." is taught by Stellwagen at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43,

the "...determining the database management system server hardware requirements..." is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...for the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

the "...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43,

the "...and outputting said yet-to-be built database management system server requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...said database management system server requirements..." is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...include an expected effective CPU utilization..." is taught by Yang at col. 33, lines 10-12 and col. 5, lines 3-8,

the "...for the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...based on the user defined workload requirements..." is taught by Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

11. As per independent claim 5, the "...obtaining at least one user defined workload requirement..." is taught by Stellwagen at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43,

the "...determining the database management system server hardware requirements..." is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...for the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

the "...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43,

the "...and outputting said yet-to-be built database management system server requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...said database management system server requirements..." is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...include an expected number of users that can be supported..." is taught by Yang at col. 30, line 30,

the "...by the yet-to-be built database management system server..." is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...based on the user defined workload requirements..." is taught by Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.



12. As per claim 6, the "...said database management system server requirements...", is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,  
the "...includes an expected effective CPU utilization...", is taught by Yang at col. 33, lines 10-12 and col. 5, lines 3-8,  
the "...of the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,  
and the "...based on the user defined workload requirements...", is taught by Stellwagen at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

13. As per independent claim 8, the "...obtaining from said a user..." is taught by Stellwagen at col. 7, lines 48-51,  
the "...a plurality of transactions definitions..." is taught by Yang at col. 12, lines 41-43,  
the "...wherein each of said transactions definitions..." is taught by Yang at col. 12, lines 41-43,  
the "...have a transaction workload contribution..." is taught by Yang at col. 12, lines 41-43 and col. 7, lines 34-35,  
the "...and an expected execution rate per second..." is taught by Yang at col. 33, lines 10-13 and col. 10, lines 48-50,  
the "...calculating a total expected workload..." is taught by Yang at col. 16, lines 21-24, col. 14, lines 7-9, col. 33, lines 10-12, and col. 7, lines 34-35,  
the "...as a function of said transactions definitions..." is taught by Yang at col. 4, lines 33-36 and col. 12, lines 41-43,

and the "...and outputting said total workload to said human user..." is taught by Stellwagen at col. 8, lines 63-65, col. 7, lines 64-67, col. 8, lines 39-43, and col. 1, lines 44-49.

14. As per claim 9, the "...obtaining a server type from said user..." is taught by Stellwagen at col. 9, lines 21-23, col. 4, lines 8-14, and col. 7, lines 48-51.

15. As per claim 10, the "...maximum desired processor utilization..." is taught by Yang at col. 11, lines 66-67 and col. 15, lines 47-54.

16. As per claim 11, the "...maximum desired network interface card utilization..." is taught by Yang at col. 11, lines 66-67, col. 15, lines 47-54, and col. 35, lines 62-65.

17. As per claim 12, the "...obtaining a server type..." is taught by Stellwagen at col. 9, lines 21-23 and col. 4, lines 8-14,  
the "...a LAN speed..." is taught by Yang at col. 27, lines 21-23,  
the "...a maximum desired processor utilization..." is taught by Yang at col. 11, lines 66-67 and col. 15, lines 47-54,  
and the "...maximum desired network interface card utilization..." is taught by Yang at col. 11, lines 66-67, col. 15, lines 47-54, and col. 35, lines 62-65.

18. As per claim 13, the "...at least some of said transactions definitions..." is taught by Yang at col. 12, lines 41-43,  
the "...include at least one SQL statement..." is taught by Yang at col. 6, lines 46-48,  
the "...wherein each of said transaction workloads..." is taught by Yang at col. 12, lines 41-43 and col. 7, lines 34-35,

the "...is calculated by calculating a workload contribution..." is taught by Yang at col. 16, lines 21-24, col. 12, lines 41-43, and col. 7, lines 34-35

and the "...of each of said SQL statements..." is taught by Yang at col. 6, lines 46-48.

19. As per claim 14, the "...said SQL statements include insert, delete, update, and/or select SQL statement types..." is taught by Yang at col. 6, lines 46-48.

20. As per claim 15, the "...said insert SQL types have parameters..." is taught by Yang at col. 6, lines 47-48 and col. 6, lines 41-42, the "...including a number of identical insert statements..." is taught by Yang at col. 11, lines 35-38 and col. 6, lines 47-48, the "...and wherein said insert statement SQL workload contribution..." is taught by Yang at col. 6, lines 47-48 and col. 7, lines 34-35, the "...is a function of said statement parameters..." is taught by Yang at col. 7, lines 1-2, col. 6, lines 47-48, and col. 6, lines 41-42, the "...said delete SQL types have parameters..." is taught by Yang at col. 6, lines 47-48 and col. 6, lines 41-42, the "...including a number identical delete statements..." is taught by Yang at col. 11, lines 35-38 and col. 6, lines 47-48, the "...and wherein said delete statement SQL workload contribution..." is taught by Yang at col. 6, lines 47-48 and col. 7, lines 34-35, the "...is a function of said statement parameters..." is taught by Yang at col. 7, lines 1-2, col. 6, lines 47-48, and col. 6, lines 41-42,

the "...said update SQL types have parameters..." is taught by Yang at col. 6, lines 47-48 and col. 6, lines 41-42,

the "...including a number of records to be operated on by said update statement..." is taught by Yang at col. 15, lines 24-33, col. 29, lines 14-16, and col. 6, lines 47-48,

the "...and wherein said update statement SQL workload contribution..." is taught by Yang at col. 6, lines 47-48 and col. 7, lines 34-35,

the "...is a function of said statement parameters..." is taught by Yang at col. 7, lines 1-2, col. 6, lines 47-48, and col. 6, lines 41-42,

the "...and said select SQL types have parameters..." is taught by Yang at col. 6, lines 47-48 and col. 6, lines 41-42,

the "...including selectivity criteria..." is taught by Yang at col. 9, lines 50-53 and col. 33, lines 33-34,

the "...and wherein said select statement SQL workload contribution..." is taught by Yang at col. 6, lines 47-48 and col. 7, lines 34-35,

and the "...is a function of said statement parameters..." is taught by Yang at col. 7, lines 1-2, col. 6, lines 47-48, and col. 6, lines 41-42.

21. As per independent claims 16 and 21, the "...obtaining from a user..." is taught by Stellwagen at col. 9, lines 21-23 and col. 7, lines 48-51, the "...a plurality of transactions definitions..." is taught by Yang at col. 12, lines 41-43, the "...wherein each of said transactions definitions..." is taught by Yang at col. 12, lines 41-43,

the "...have a transaction workload contribution...", is taught by Yang at col. 12, lines 41-43 and col. 7, lines 34-35,

the "...and an expected execution rate per second...", is taught by Yang at col. 33, lines 10-13 and col. 10, lines 48-50,

the "...determining a total expected workload...", is taught by Yang at col. 16, lines 21-24, col. 14, lines 7-9, col. 33, lines 10-12, and col. 7, lines 34-35,

the "...as a function of said transactions definitions...", is taught by Yang at col. 4, lines 33-36 and col. 12, lines 41-43,

the "...and determining the database management system server hardware requirements...", is taught by Stellwagen at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...for the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14,

and the "...as a function of said total expected workload...", is taught by Yang at col. 4, lines 33-36, col. 14, lines 7-9, col. 33, lines 10-12, and col. 7, lines 34-35.

22. As per claim 17, the "...the database management system server hardware requirements...", is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43,

the "...includes a processor type...", is taught by Yang at col. 1, lines 59-63,

and the "...for the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

23. As per claim 18, the "...the database management system server hardware requirements...", is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43, the "...includes number of processors...", is taught by Yang at col. 8, lines 26-29, and the "...for the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

24. As per claim 19, the "...the database management system server hardware requirements...", is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43, the "...includes I/O requirements...", is taught by Yang at col. 15, lines 55-63, and the "...for the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

25. As per claim 20, the "...the database management system server hardware requirements...", "...", is taught by Stellwagen at col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43, the "...includes memory requirements...", is taught by Yang at col. 1, lines 13-20, and the "...for the yet-to-be built database management system server...", is taught by Stellwagen at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

26. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stellwagen, Jr. (U.S. Patent No. 5,835,755) and Blake et al. (U.S. Patent No. 6,067,412).

27. Stellwagen renders obvious independent claim 7 by the following:

"...obtaining at least one user defined workload requirement..." at col. 9, lines 21-23, col. 7, lines 48-51, and col. 8, 39-43.

"...determining the database management system server hardware requirements..." at col. 9, lines 8-10, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

"...for the yet-to-be built database management system server..." at col. 8, lines 27-30, col. 1, lines 32-35, and col. 4, lines 8-14.

"...as a function of said user defined workload requirement..." at col. 4, lines 33-36, col. 7, lines 48-51, and col. 8, 39-43.

"...and outputting said yet-to-be built database management system server requirements..." at col. 8, lines 63-65, col. 8, lines 27-30, col. 1, lines 32-35, col. 4, lines 8-14, and col. 8, 39-43.

"...wherein said user defined workload requirements..." at col. 7, lines 48-51 and col. 8, 39-43.

"...and wherein said determining step determines values..." at col. 9, lines 8-10 and col. 4, lines 29-32.

Stellwagen does not teach the use of baseline system transactions per second, calculated transactions, and their ratio.

28. However, Blake teaches the use of baseline system transactions per second, calculated transactions, and their ratio as follows:

"...includes a baseline system transactions per second..." at col. 9, lines 44-49 and col. 2, lines 6-7.

"...and said outputs includes a calculated transactions per second value..." at col. 8, lines 63-65 and col. 2, lines 6-7.

"...and a ratio of said calculated transactions per second to said baseline transactions per second..." at col. 6, lines 62-64, col. 8, lines 63-65, col. 2, lines 6-7, and col. 9, lines 44-49.

"...for said calculated transactions per second..." at col. 8, lines 63-65 and col. 2, lines 6-7.

"...and said transactions per second ratio..." at col. 2, lines 6-7 and col. 6, lines 62-64.

It would have been obvious to one of ordinary skill at the time of the invention to combine Blake with Stellwagen since Stellwagen and Blake, teach the use of computers, the use of databases, the use of networks, the use of clients, the use of servers, the use of hardware, the use of software, the use of workloads, and the use of requirements. Stellwagen provides a proposed database management system server and Blake provides a baseline system for the performance of the server.

### **Response to Arguments**

29. Applicant's arguments filed 19 May 2003 have been fully considered but they are not persuasive. In the first argument on page 9, paragraph and page 10, paragraph 1 for independent claim 1, the Applicant states:

"As detailed in the Declaration, and shown by the evidence attached thereto, the present inventor completed the inventions included in this application prior to April 30, 1999, which is the effective filing date of the Yang et al. patent (U.S. Patent No. 6,542,854). As such, Applicant respectfully requests that the Examiner withdraw all rejections of the pending claims that are based on the teachings of the Yang et al. patent in response to the inventors' Declaration of Prior Invention."



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As noted in sections 1-4 of this Office Action, the applicant's affidavit fails to meet the basic requirements of 37 CFR 1.131 and therefore, does not negate the use of Yang et al. as a prior art reference to render obvious independent claim 1 as amended.

30. In the second argument on page 11, paragraph 3 for independent claim 7, the Applicant states:

"As can be seen, the first cited passage of Blake et al. suggests using a synthetic workload generator to apply workloads to a baseline computer system. However, this does not suggest a user defined workload requirement that includes a baseline system transactions per second, as recited in claim 7."

Blake teaches "includes a baseline system transactions per second" at col. 9, lines 44-49 and col. 2, lines 6-7. The Office Action combined two references of Blake.

"...This information about the performance of the operating system is preferably generated during the construction of the model by using the synthetic workload generator to apply known workloads to a **baseline computer system** and using the actual performance measurements as an indication of the operating system performance..." at col. 9, lines 44-49.

"Thus, if the current CPU was replaced by a CPU that was twice as fast, the computer system still could only handle 2 **transactions per second**."

It is abundantly clear, that the combining of these two teachings suggests the phrase "baseline system transactions per second" since Blake uses baseline computer systems and a common measure to define a baseline is transactions per second.

31. In the third argument on page 12, paragraph 2 and page 13, paragraph 1 for independent claim 7, the Applicant states:

"As can be seen, none of the workload parameters provided in Table 3 of Blake et al. appear to even remotely relate to a user defined workload requirement that includes a baseline system transactions per second, as recited in claim 7. Instead, they all appear to relate to workload parameters for very specific functions within a computer system,

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and not an overall transaction per second parameter of a baseline system. As such, Blake et al. would appear to teach away from the claimed invention. Nor does anything in this section of Blake et al. appear to suggest providing an output that includes a calculated transactions per second value, and a ratio of said calculated transactions per second to said baseline transactions per second, as recited in claim 7."

The phrase "baseline system transactions per second is addressed in the response to the second argument. Blake teaches "and said outputs includes a calculated transactions per second value" at col. 8, lines 63-65 and col. 2, lines 6-7.

The Office Action combined two references of Blake.

"...Each entry contains the name of the operating system characteristic and a value or formula for **calculating** a value..." at col. 8, lines 63-65.

"Thus, if the current CPU was replaced by a CPU that was twice as fast, the computer system still could only handle 2 **transactions per second.**"

It is abundantly clear, that the combining of these two teachings suggests the phrase "calculated transactions per second" since Blake uses calculated computer system values and a common measure to define a baseline is transactions per second. Finally, Brake teaches the use of a ratio of values as follows:

"...Relative\_Memory\_Usage: ["**ratio**"]  
Index(Relative\_Memory\_Size,  
Installed\_Processor\_Index - 1)..." at col. 6, lines 62-64.

In this definition, Brake teaches the use of a ratio in defining a metric for the performance of the Microsoft Windows NT Operating System. There is a strong suggestion that this reference may be combined with the three previous references to produce the metric ratio of the calculated transactions per second to the baseline transactions per second.

32. In the fourth argument on page 14, paragraph 2 for independent claim 7, the Applicant states:

"Moreover, it is clear that the cited portion of Table 1 relates to a relative memory size and a relative memory usage, which does not appear to be related in any way to providing an output that includes a calculated transactions per second value, and a ratio of said calculated transactions per second to said baseline transactions per second, as recited in claim 7."

This is essentially a repeat of the third argument. Therefore, the response to the third argument also applies to the fourth argument.

### ***Conclusion***

33. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold E. Dodds, Jr. whose telephone number is (703)-305-1802. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (703)-305-9790. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-305-3900.



Harold E. Dodds, Jr.  
Patent Examiner  
December 30, 2003



GRETA ROBINSON  
PRIMARY EXAMINER